

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA

v.

Criminal Complaint
No. 04-1809-CBS

MATTHEW CREAM

U.S. DISTRICT COURT
DISTRICT OF MASS.

MATTHEW CREAM'S OPPOSITION TO
GOVERNMENT'S REQUEST FOR DETENTION

NOW COMES the defendant, Matthew Cream, and respectfully submits the within memorandum in opposition to the Government's request for detention pursuant to 18 U.S.C. § 3142(f). This memorandum will show that there are conditions of release that would reasonably assure the defendant's appearance before the Court and ensure the safety of the community short of detention.

PERSONAL BACKGROUND

Matthew Cream ("Matt") was born on November 1, 1981 in Gloucester Massachusetts. He is twenty-three years old. From an early age, Matt had an untraditional and often difficult childhood. Matt's father was shot and killed by a Gloucester Police Officer when he was only an infant. Shortly thereafter, while Matt was still young, his mother became severely drug dependant. She later contracted the HIV virus, and has been diagnosed with cancer and psychological problems. Because of this, Matt spent a

large part of his youth and adolescence bouncing around between different living situations.

Matt and his younger brother Christopher were removed from their mother's care when Matt was five years old. The first family they lived with gave up foster care after about one year, but took the two back less than a year later when they learned of the substantial abuses they suffered at two other foster homes.

Less than a year later, Matt's mother regained custody of the boys during a brief period of sobriety. Soon after, however, she began leaving Matt with relatives for months at a time with no explanation. For approximately eight or nine years thereafter, Matt bounced around between several different families in the community including his Aunt Darlene, the Sears and the Williams, and was even homeless at times. As a result of his unstable living arrangements, Matt rarely received any individualized attention, and never had the opportunity to process or reconcile the painful memories of his childhood.

When Matt was nineteen, however, he moved in with his older sister, Nichole and her husband Stephen Poliskey. They are happily married with five children, ages 10, 7, 6, 4 and 2. This family began caring for Matt's younger brother Christopher, age 19, nine years earlier.

In this environment, Matt has excelled. His performance in school dramatically improved whereupon he began receiving "A" grades, even while working almost full time for Stephen Poliskey as a roofer. Matt graduated Gloucester High School in 2001, and worked full time for Stephen for another year. Matt then enrolled at the North Shore Community College where he completed his first full year with an excellent grade point average.

During this time, Matt became involved in a serious relationship with Jennifer Pearce, who is herself a very intelligent and dedicated young woman. Jennifer graduated in the top ten of her class from Gloucester High School, and is presently in her third year at New York University. The two soon became engaged to be married. Jennifer's mother, Patti Pearce, is a licensed social worker and has become a valuable mentor for Matt over the years. A letter of support from her is annexed hereto as "Exhibit A," which expresses more about Matt than could be possibly included in this memorandum. See Exhibit A.

During the Summer of 2003, however, Jennifer broke off her wedding engagement with Matt. Several months later, Matt turned to drugs which had plagued him during his early adolescence. His drug use soon escalated into a serious addiction, which is the cause of his present problem.

PRIOR CRIMINAL HISTORY

Prior to moving into his sister's home, while Matt was transient and living with different families in the Gloucester community, Matt admittedly made some poor decisions about peer relationships and avoiding situations that may lead to trouble. Matt was arrested once as a juvenile and three times as an adult. No one ever got hurt as a result of anything Matt allegedly did, and most importantly, Matt has never been charged for a drug related offense. All charges except one were misdemeanors in the lower state courts, and Matt never missed a court date. Every single charge against Matt was ultimately dismissed.

ALLEGED CRIMINAL CONDUCT

Based on all of the first hand information provided to counsel thus far in this matter, and assuming it to be true for the purposes of the hearing, Matt's alleged involvement in this matter is limited to the following.

The investigation in this matter began in October, 2003. The first information received by agents relative to Matt was on January 14, 2004, after at least eight undercover purchases had already been organized and completed between the agents and other members of the alleged conspiracy. On January 14, 2004, one of those alleged organizers informed the agents that "Creamy," later

determined to be Matt Cream, was going to be used "as a runner".

Matt is then alleged to have been involved in one delivery of 99 Oxycontin pills along with co-defendant Beshman.¹ Several days later, Matt is alleged to have been the driver of a vehicle used to transport another co-defendant who made a sale of 13 Oxycontin pills. Matt was not involved in any way in the negotiation of these transactions, or the arrangement of any details relative to the transactions.

Only two other observations of Matt were made by agents during the rest of the investigation, which lasted through June and included at least six additional transactions. Both times Matt was a passenger in a motor vehicle that picked up another co-defendant after he had made a sale of Oxycontin. Matt was not involved in any way in arranging or negotiating those transactions. Further, neither the vehicle he was in nor Matt were with the distributor of the Oxycontin prior to the transaction nor dropped him off prior to the deal being consummated.

Based on the first hand knowledge of the agents involved, there can be no logical inference that Matt was

¹ Although, the Affidavit submitted in support of the Complaint indicates that Matt delivered the bag containing the pills, the incident was reportedly videotaped by the DEA, and on information and belief, that tape may show the delivery was not made by Matt.

involved in any way as an organizer in any alleged conspiracy. His role, at best, can be described as that of a runner on two occasions. His involvement with any conspiracy ended a week after it began.

LACK OF FLIGHT RISK OR DANGER TO COMMUNITY

Matt is a lifelong resident of Gloucester, who has rarely, if ever, left the state of Massachusetts. His entire family lives in Gloucester and the surrounding community. Annexed hereto as "Exhibit B" are additional letters of support from members of the community. As the attached letters of support indicate, Matt is has always impressed people with his kindness, strength of character and other gifts, despite his tragic upbringing. See Exhibits A & B.

Unfortunately, when his engagement to Jennifer Pearce ended, Matt began associating with a peer group that had less than honorable intentions. He then developed a strong addiction to Oxycontin, which again clouded his judgment. When not under the influence of narcotics, Matt is an intelligent, respected young man who has many accomplishments to his name, and who is loved by many.

Matt, now has the renewed support of all his family, relatives and friends to help him face this problem. He also has a renewed dedication to kicking his narcotics

habits for good. Matt owns no property, has no money or even a bank account. Matt has never had a passport.

Finally, Matt has a strong respect for the judicial system which is evidenced by his prior track record of appearing in Court. Matt is willing to abide by whatever conditions this Court would deem appropriate to ensure his continued appearance in this matter, including supervised release and third party custody, maintained employment which is available to him at Stephen Poliskey's roofing company in Gloucester, abiding by any curfew, participation in drug treatment and related conditions including drug and alcohol abstinence and testing, and anything else the Court deems appropriate.

Further, Nichole and Stephen Poliskey are willing to be custodians for Matthew, and to report his daily progress to Pre-trial Services directly. Annexed hereto as "Exhibit C" are letters from them. The Poliskey's are people of strong morals and character. They have spoken with Pre-trial Services at length, and will be meeting with them in person this morning. Finally, they are also willing to execute any agreement with the Clerk of Courts for surety in property, if necessary.

CONCLUSION

For the forgoing reason, the defendant respectfully requests that this Honorable Court, after hearing, find that there are conditions of release that would reasonably assure his appearance before this Honorable Court and ensure the safety of the community, and asks that the Court release him pursuant to those conditions.

Respectfully submitted,
MATTHEW CREAM
By his Attorney,

A handwritten signature in black ink, appearing to be 'B. Linson', written over a horizontal line.

Bruce Linson
BBO # 637413
Howe & Bainbridge Building
220 Commercial Street
Boston, MA 02109
(617) 371-0900


DATED: July 12, 2004

CERTIFICATE OF SERVICE

I, Bruce Linson, counsel for the above named defendant, hereby certify that I served a copy of the foregoing document and supporting materials on all parties of record in this matter. Said service was made in-hand on this the 12th day of July 2004, to:

Michael Pelgro, Esq.
Assistant United States Attorney
U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Federal Probation Services
U.S. Courthouse
1 Courthouse Way
Boston, MA 02210



Bruce Linson

EXHIBIT A

Re: Matt Cream

To Whom It May Concern:

I am writing on behalf of Matthew Cream whom I have known for eight years as a close friend of my daughter Jenny's and as a friend to our family. I am a practicing psychotherapist of twenty years and have been a close advisor to Matthew as he has struggled with the legacy of his family's violence and dysfunction. I have known Matthew to be a young man of great cognitive intelligence, kindness and a truly good heart. Matthew has, over his years in the Cape Ann community, impressed many people with his strength of character and his gifts. I have seen many occasions on which people were willing to offer him their homes, their care and their support. There remains a very active support network for him in our community.

Matthew's emotional history is severely challenging, including parental abandonment and death, and extensive and consistent childhood trauma (physical, sexual and verbal from multiple perpetrators) with very early onset. Not unexpectedly, having suffered this kind of abuse, Matthew in his early and late adolescence has shown signs of alcohol and drug addiction. In addition to suffering the violent death of his father at age two, he has had to grapple with the declining health of his mother who actively suffers from HIV illness.

Given the enormity of these challenges, it is my assessment that he has never had consistent and sufficient psychological treatment and addiction recovery treatment protocol to match the level of violence and parental losses to which he was exposed. But based on decades of professional experience with such cases, and a practice that focused on treatment for young children in violent homes, I believe Matt's history of abuse and loss is exceptional. Having done multi-generational family counseling with abusive families, including years as a social worker affiliated with child protective services, I have heard literally hundreds of stories, but few are as tragic and heart breaking as Matt's.

Several different factors complicate this picture and make his addiction more inevitable and deserving of compassion and active treatment intervention. The consistent physical pain Matthew experiences from work-related injuries makes him all the more vulnerable to substance abuse. In addition, Matthew has grown up in a community that is notorious for adolescent substance abuse. Gloucester MA has one of the highest rates of addiction on the eastern seaboard, and some of Matthew's earlier peer groups were comprised of young people actively addicted to alcohol and other substances.

Despite his emotional challenges and substance abuse history, I have known Matthew to be a very reliable and responsible young man capable of making commitments, working regularly, and honoring personal and community obligations. Most importantly, with respect to the issues before the Court, he has consistently and without exception respected the authority of the court. I am confident that were the court to allow him to live with his family or one of my colleagues pending further proceedings, Matthew will steadfastly respect any conditions imposed and

appear promptly at any future hearings. Specifically, based upon my long familiarity with Matthew, both as a friend and in a professional context, he can be relied on to attend court hearings and participate in any treatment ordered by the court.

Matt is a young man who aspires to a life of service and caring for others. He has accompanied me on numerous contemplative retreats and community activities. I believe that were he to finally receive the appropriate and indicated levels of psychological care and substance abuse treatment, he would embark on a newly stabilized life full of hope and promise. I do not believe that Matthew is a threat in any way to society nor a person wanting to spend his life in trouble with the law. I believe he is a troubled young man who deserves a chance to turn his life around and begin again.

I want you to know that I am willing to pledge my love and support and home to vouch for Matt and to shelter him in this period of transition and vulnerability. My professional and community colleagues and close friends represent a sophisticated network of emotional, financial and logistical support available to Matt as he structures his life anew. We are all eager to be of help in securing Matthew treatment, and helping guide and encourage him when he emerges from treatment sober and ready to build a new life.

Having worked with a number of area experts in treatment for addiction, we are prepared to immediately develop a treatment plan for Matt which could include inpatient or outpatient substance abuse treatment at a local facility in greater Boston. He should be able attend Waltham Deaconess Detoxification Center for twenty-eight days in order to deal with the physical, psychological and interpersonal dimensions of his addiction. Following that time, Matt could reside in my home. Eventually, the plan would be to relocate him to a community less infused with a adolescent drug culture. Matt is also actively considering spending some time, were he allowed, at a local contemplative retreat center, which could both afford him a greater sense of community and assist in the healing process.

My family and friends want to do everything possible to assure the court that we will protect and support Matt during this time. We have offered our home and our commitment to help him recover and heal. We believe that with this support, and the opportunity to avail himself of this support in the community, he can actively shape a new kind of life for himself and the community in which he is a part.

Sincerely,

Patti Pearce LICSW
Patti Pearce, LICSW

EXHIBIT B

Fintan Madden
14R Harrison Avenue
Gloucester, MA 01930

July 10, 2004

RE: Matthew Cream

To Whom It May Concern:

Mr. Matthew Cream has been a friend and Neighbor of mine for the four and a half years.

I know him as a very responsible, caring and honest individual, therefore the charges against Mr. Cream are very much out of character for him and have come as a complete shock to me.

Mr. Cream has never shown any inappropriate behavior while in my presence, he has always conducted himself impeccably and with the utmost integrity.

Sincerely,



Fintan Madden
Realtor

July 9, 2004

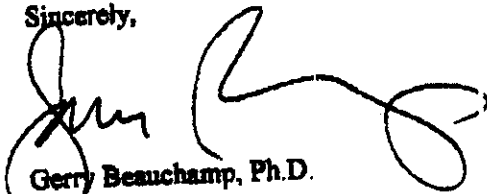
To Whom It May Concern:

I have known Matthew Cream since his birth. I have seen him survive a difficult childhood and manage to successfully complete his secondary education due mainly to the support of his sister, Nicole, and her husband, Stephen. Matt has worked in construction for Stephen since completing high school. In the past year he has been venturing out more on his own and it is probably not surprising that he has found himself in conflict with the legal system and involved with less than savory characters.

It is my sincere hope that Matt has learned from his mistakes and will be afforded an opportunity to right himself and recognize his need for counseling and support to turn his young life around. As a father of an young adult I am very aware of the need for consequences for behavior as well as the need for patience for somebody who is still maturing and not always making good decisions. I hope you will give consideration to this young man's challenging upbringing and give him a chance to live up to his potential

With the support of his sister's family, and that of his extended family, Matt has a chance to make better choices and make this a turning point towards a better life.

Sincerely,



Gerry Beauchamp, Ph.D.
Executive Director
Ipswich Family YMCA

EXHIBIT C

7/9/2004

To Whom It May Concern:

I am writing this letter concerning my brother Matthew Lawrence Cream. It is with complete honesty that I write this letter. I am sure that you have read and heard all the suffering that my siblings have endured over their lifetimes. It is what Matthew has to offer that I would like to share with you.

Matthew is the most compassionate man I have ever known. He is full of life and has so much love to give.

Matthew is an amazing uncle. He loves our five children (between the ages of 3 and 10) with all of his heart. He fills their hearts with joy and teaches them how to love one another completely.

Matthew can be funny and shares his humor with my family and I. There has not been one day in my life until recently that Matthew has not made me smile.

Matthew is intelligent and an exceptional reader. He loves books of all sorts but he is partial to poetry. He is not condescending; with those not blessed with his capabilities but always willing to share what he has learned.


Matthew is loyal and will offer his help and support even when it causes him suffering.

Matthew is an amazing brother who loves me unconditionally. He is not afraid to show me when he is suffering. He has been afraid to ask for help.

Matthew is facing the most challenging obstacle in his young life. He has a drug addiction. This has been the most difficult thing for him to admit. He has become one of them. One of the people he despised as a child, one of the people he said he would never be.

I have always been Matthew's mother, his best friend and his sister. I will do whatever it takes to get Matthew the help he needs. He has asked for help and expressed his desire to do good. Please give Matthew this chance.

Sincerely,


Nicole Polisky

S. POLISKEY & SONS INC
ROOFING CONTRACTOR

11 Pond Road
Glenview, IL 60025
Phone 847.261.2442
Fax 847.261.2478

Date: July 10, 2004

To Whom It May Concern:

Matthew Cream has been employed at Poliskey and Sons, Inc. for three years. Prior to his addition, Matthew was a reliable, hard-working employee with promising leadership capabilities. I noticed that his level of commitment sharply declined approximately three months ago. I am confident that Matthew has every intention of becoming the responsible employee that he once was. He has been a motivated individual and I am looking forward to having him return to work.

Sincerely,


S. Poliskey & Sons Inc.